

Staff
Summary
Report



To: Mayor & City Council
Through: City Manager

Agenda Item Number 666
Meeting Date 09/13/01

**SUBJECT: EXCESS WATER CONTRACT FOR CAP INCENTIVE
RECHARGE WATER**

PREPARED BY: Charlotte Benson, Assistant City Attorney (350-2813)

REVIEWED BY: C. Brad Woodford, City Attorney (350-8229)

BRIEF: Resolution approving and authorizing Mayor to sign replacement Excess Water Contract for Central Arizona Project Incentive Recharge Water.

COMMENTS: CENTRAL ARIZONA PROJECT (0107-03) RESOLUTION NO. 2001.45. Stipulation entered in settlement of CAWCD repayment litigation with United States requires changes to existing CAP excess water contracts. Resolution 2001.45 approves and authorizes execution of replacement contract to supercede City's existing Incentive Recharge Water contract.

Document Name: (20010913cacc05) Supporting Documents: Yes

SUMMARY: CAWCD entered into a stipulation with the United States to resolve disputes over the repayment obligation for the Central Arizona Project. The stipulation provides that the term of excess water contracts may not exceed one year, although the contracts may include a provision for automatic renewal. Current excess water contracts like Tempe's do not comply with the stipulation, and must be replaced. Resolution 2001.45 approves and authorizes execution of a replacement contract which reflects the stipulated settlement.

FISCAL NOTE: Price for incentive recharge water service for 2001 remains \$45.00 per acre-foot. Tempe incurs no additional costs for replacement contract than already allocated for existing Incentive Recharge Water contract.

RECOMMENDATION: Approve and authorize Mayor to sign replacement Excess Water contract for CAP Incentive Recharge Water.

RESOLUTION NO. 2001.45

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF TEMPE, ARIZONA, APPROVING AND AUTHORIZING
THE MAYOR TO SIGN THE EXCESS WATER
CONTRACT FOR CAP INCENTIVE RECHARGE WATER.**

WHEREAS, the Central Arizona Water Conservation District (CAWCD) has entered into a stipulation with the United States to resolve disputes over the repayment obligation for the Central Arizona Project (CAP); and

WHEREAS, the stipulation provides that the term of excess water contracts may not exceed one year, although contracts may include a provision for automatic renewal; and

WHEREAS, the City of Tempe has an existing excess water contract with CAWCD that does not comply with the stipulation; and

WHEREAS, the CAWCD Board of Directors has approved a replacement form of excess water contract, and has offered that contract to the City of Tempe; and

WHEREAS, the City of Tempe scheduled delivery of 10,000 acre-feet of excess CAP water for in lieu recharge this year; and

WHEREAS, the City of Tempe may schedule between 5,000 and 10,000 acre-feet of CAP incentive recharge water next year.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

That the replacement Excess Water Contract for CAP Incentive Recharge Water is approved, and that the Mayor is authorized to sign the new contract for the City of Tempe.

PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this ____ day of _____, 2001.

MAYOR

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

AGREEMENT BETWEEN THE CENTRAL ARIZONA
WATER CONSERVATION DISTRICT AND CITY OF TEMPE
PROVIDING FOR THE DELIVERY OF EXCESS
CENTRAL ARIZONA PROJECT WATER

This Agreement is made as of the ____ day of _____, 2001, in pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, including but not limited to the Boulder Canyon Project Act of December 21, 1928 (45 Stat. 1057, as amended, the Reclamation Project Act of August 4, 1939 (53 Stat. 1187), as amended, the Reclamation Reform Act of October 12, 1982 (96 Stat. 1263), and particularly the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 885), as amended (the "Basin Project Act"), between the CENTRAL ARIZONA WATER CONSERVATION DISTRICT ("CAWCD"), and the CITY OF TEMPE (the "Contractor"), with its principal place of business in Tempe, Arizona.

RECITALS

A. The Basin Project Act provides, among other things, that for the purposes of furnishing irrigation and municipal and industrial ("M&I") water supplies to water deficient areas of Arizona and western New Mexico through direct diversion or exchange of water, control of floods, conservation and development of fish and wildlife resources, enhancement of recreation opportunities, and for other purposes, the Secretary shall construct, operate, and maintain the Central Arizona Project ("CAP").

B. The United States and CAWCD have entered into Contract No. 14-06-W-245, Amendment No. 1, dated December 1, 1988 (the "Repayment Contract"), which is incorporated by reference, providing for the delivery of water and repayment of costs of the CAP.

C. The United States and CAWCD have entered into the Stipulation Regarding a Stay of Litigation, Resolution of Issues During the Stay and for Ultimate Judgment upon the Satisfaction of Conditions, filed with the United States District Court on May 3, 2000, in Central Arizona Water Conservation District v. United States, No. CIV 95-625-TUC-WDB (EHC), No. CIV 95-1720-PHX-

EHC (Consolidated Action) (the "Stipulation"), which modifies the Repayment Contract in certain respects.

D. Paragraph 5(d)(2) of the Stipulation grants CAWCD the exclusive right to sell or use Excess Water.

E. The Contractor is in need of a water supply and desires to contract with CAWCD for Incentive Recharge Water, which is specifically priced Excess Water made available for recharge purposes only.

AGREEMENT

Repayment Contract and Stipulation Controlling

1. The Contractor expressly approves and agrees to all the terms presently set out in the Repayment Contract and Stipulation, or as such terms may be hereafter amended, and agrees to be bound by the actions to be taken and the determinations to be made under those agreements, except as otherwise provided herein. In the event of any inconsistency between this Agreement and the Repayment Contract, the provisions of the Repayment Contract, as modified by the Stipulation, shall be controlling. Definitions included in the Repayment Contract and Stipulation are applicable to this Agreement. The first letters of terms so defined are capitalized herein.

Delivery of Water by CAWCD

2. In so far as Project Water supplies and the delivery capability of the Project will permit, and subject to the provisions of the Repayment Contract and Stipulation, CAWCD will deliver Incentive Recharge Water to the Contractor in an amount, and at a water service charge, to be determined in accordance with the terms of this Agreement. The determination of whether Incentive Recharge Water is available for delivery in any Year, and, if so, the amount of such Incentive Recharge Water that is available for delivery under this Agreement in any Year, is a determination within the exclusive discretion of CAWCD; Provided, however, That delivery of Incentive Recharge Water under this Agreement shall be subject to the prior satisfaction of all water deliveries scheduled pursuant to a long-term contract or subcontract for Project Water service, as that term is used in the Stipulation.

* * *

Term

1 3. The initial term of this Agreement expires on December 31 of the year in which it is
2 executed. This Agreement will be automatically renewed for successive one-year terms unless either party
3 notifies the other by October 1 of any year that it does not wish to renew the Agreement for the following
4 year or unless sooner terminated in accordance with Article 6 or Article 11.

Conditions Relating to Delivery and Use

6 4. The delivery and use of water under this Agreement is conditioned on the following, and the
7 Contractor hereby agrees that:

8 (a) All uses of Project Water and Return Flow shall be consistent with Arizona water
9 law unless such law is inconsistent with the Congressional directives applicable to the Central Arizona
10 Project.

11 (b) Project Water made available pursuant to this Agreement shall be used within
12 Contractor's service area or place of use for direct or indirect recharge purposes only. The Contractor's
13 service area or place of use is described in Exhibit A, which is incorporated by this reference, and may be
14 amended by the Contractor from time to time.

15 (c) The system or systems through which Project Water is conveyed after delivery to
16 the Contractor shall consist of pipelines, canals, distribution systems, or other conduits which will prevent
17 excessive conveyance losses.

18 (d) Project Water furnished pursuant to this Agreement shall be delivered through
19 Project Works for use directly or by exchange as permitted by law.

20 (e) Project Water furnished to the Contractor pursuant to this Agreement may not be
21 resold or transferred, but the Contractor may enter into an arrangement with a groundwater savings facility
22 allowed under state law to store Project Water.

23 (f) The Contractor shall not pump, or within its legal authority, permit others to pump
24 groundwater from within the exterior boundaries of the Contractor's service area for use outside of said
25 service area unless such pumping is permitted under Title 45, Chapter 2, Arizona Revised Statutes, as it may
26

1 be amended from time to time, and CAWCD and the Contractor shall agree, or shall have previously
2 agreed, that a surplus of groundwater exists and drainage is or was required; Provided, however, That such
3 pumping may be approved by CAWCD, and approval shall not be unreasonably withheld, if such pumping
4 is in accord with the Basin Project Act and upon submittal by the Contractor of a written certification from
5 the Arizona Department of Water Resources or its successor agency that the pumping and transportation
6 of groundwater is in accord with Title 45, Chapter 2, Arizona Revised Statutes, as it may be amended from
7 time to time.

8 (g) Notwithstanding any other provision of this Agreement, Project Water shall not be
9 delivered to the Contractor unless and until the Contractor has obtained final environmental clearance from
10 CAWCD for the system or systems through which Project Water is to be conveyed after delivery to the
11 Contractor at the Contractor's Project delivery point.

12 (h) The Contractor may direct that Incentive Recharge Water made available pursuant
13 to this Agreement be delivered to a groundwater savings facility for indirect recharge pursuant to a separate
14 agreement between the Contractor and the operator of the groundwater savings facility; Provided, however,
15 that:

16 (i) Incentive Recharge Water shall be used by an identified groundwater user on
17 a gallon-for-gallon substitute basis directly in lieu of groundwater as provided in A.R.S. § 45-812.01.

18 (ii) The Contractor and the operator of the groundwater savings facility must
19 demonstrate to CAWCD's satisfaction that they have the appropriate permits issued by the Arizona
20 Department of Water Resources.

21 (iii) Where the operator of the groundwater savings facility is an agricultural entity
22 participating in CAWCD's target pricing program, only Project Water over and above the amount of
23 Project Water taken by the agricultural entity in the immediately preceding year, not including Incentive
24 Recharge Water, may qualify as Incentive Recharge Water.

25 (iv) The Contractor shall provide CAWCD a copy of its agreement with the
26 operator of the groundwater savings facility for Incentive Recharge Water.

1 (i) Only Project Water for which the Contractor receives long-term storage credits
2 from the Arizona Department of Water Resources may qualify as Incentive Recharge Water.

3 (j) Upon the expiration of this Agreement, CAWCD will determine whether any
4 Project Water delivered pursuant to this Agreement did not qualify as Incentive Recharge Water for the
5 reasons specified in sections 4(g)(iii) or 4(h) of this Agreement. For any such Project Water not qualifying
6 as Incentive Recharge Water, CAWCD will bill the Contractor for the difference between the water service
7 charge for Incentive Recharge Water and the standard M&I water service charge.

8 Procedure for Ordering Water

9 5. (a) On or before the date of execution of this Agreement, or as soon thereafter as is
10 practicable, CAWCD will notify the Contractor of the amount of Incentive Recharge Water available for
11 delivery during the first Year under this Agreement (the initial Year of water delivery). The Contractor shall,
12 within a reasonable period of time as determined by CAWCD, submit a written schedule to CAWCD
13 showing the quantity of Incentive Recharge Water desired by the Contractor during each month of the initial
14 Year of water delivery. CAWCD will review the requested schedule and determine whether Incentive
15 Recharge Water is available for delivery in the initial Year of water delivery, and, if so, the amount of
16 Incentive Recharge Water available for delivery under this Agreement during such Year. Within thirty (30)
17 days of CAWCD's receipt of the Contractor's requested schedule, CAWCD shall determine and furnish
18 to the Contractor the water delivery schedule for the initial Year of water delivery which shall show the
19 amount of Incentive Recharge Water projected to be delivered to the Contractor during each month of such
20 Year, contingent upon the Contractor remaining eligible to receive water under all terms contained herein.

21 (b) The amounts, times, and rates of delivery of Incentive Recharge Water to the
22 Contractor during each Year subsequent to the initial Year of water delivery shall be in accordance with a
23 water delivery schedule for that Year. Such schedule shall be determined in the following manner:

24 (i) On or before July 1 of each Year beginning with July 1 of the initial Year of
25 water delivery, CAWCD shall issue a notice of availability of Incentive Recharge Water to the Contractor.

26 * * *

1 (ii) On or before October 1 of each Year beginning with October 1 of the initial
2 Year of water delivery, the Contractor shall submit in writing to CAWCD a water delivery schedule
3 indicating the amounts of Incentive Recharge Water desired by the Contractor during each month of the
4 following Year.

5 (iii) Upon receipt of the schedule, CAWCD shall review it together with all other
6 water delivery schedules, and determine whether Incentive Recharge Water is available for delivery in the
7 following Year, and, if so, the amount of Incentive Recharge Water available for delivery under this
8 Agreement in the following Year.

9 (iv) On or before November 15 of each Year beginning with November 15 of
10 the initial Year of water delivery, CAWCD shall determine and furnish to the Contractor the water delivery
11 schedule for the following Year which shall show the amount of Incentive Recharge Water to be delivered
12 to the Contractor during each month of that Year, contingent upon the Contractor remaining eligible to
13 receive water under all terms contained herein.

14 (c) The monthly water delivery schedules may be amended upon the Contractor's
15 written request to CAWCD. Proposed amendments shall be submitted by the Contractor to CAWCD no
16 later than 15 days before the desired change is to become effective, and shall be subject to review and
17 modification in like manner as the schedule. CAWCD shall notify the Contractor of its action on the
18 Contractor's requested schedule modification within 10 days of CAWCD's receipt of such request.

19 (d) The Contractor shall hold CAWCD, its officers, agents, and employees, harmless
20 on account of damage or claim of damage of any nature whatsoever arising out of or connected with the
21 actions of CAWCD regarding water delivery schedules furnished by or to the Contractor.

22 Contractor's Project Delivery Point, Measurement
23 and Responsibility for Distribution of Water

24 6.. (a) Incentive Recharge Water furnished to the Contractor pursuant to this agreement
25 shall be delivered to the Contractor at such point(s) on the Water Supply System as are agreed upon in
26 writing by CAWCD and the Contractor. All such point(s) shall hereinafter be referred to as the
"Contractor's Project delivery point."

1 (b) Unless CAWCD and the Contractor agree by contract to the contrary, the
2 Contractor shall construct and install, at its sole cost and expense, all connection facilities required to convey
3 water furnished to the Contractor pursuant to this Agreement to the Contractor's service area or place of
4 use, as the case may be. The Contractor shall furnish, for written approval by CAWCD, drawings and
5 specifications showing all connection facilities to be constructed or installed within the Water Supply System
6 right-of-way, and shall obtain such approval before commencing construction or installation of such facilities.
7 All facilities constructed, installed, operated or maintained on the Water Supply System right-of-way by or
8 for the Contractor shall be subject to such further agreements and to such restrictions and regulations as to
9 type, location, method of installation, operation, and maintenance as may be prescribed by CAWCD.

10 (c) The Contractor shall construct, operate, and maintain its connection facilities and
11 appurtenant works in a good and workmanlike manner and in full compliance with the laws of the State of
12 Arizona and with all laws, regulations, and orders of the United States affecting such operations. The failure
13 of the Contractor after due notice to construct, operate, and maintain its connection facilities and appurtenant
14 works in a good and workmanlike manner or to abide by any of the terms and conditions of any applicable
15 laws, regulations, or orders, shall cause this Agreement to be subject to immediate termination at the option
16 of CAWCD. The Contractor shall reimburse CAWCD within thirty (30) days of Contractor's receipt of
17 a statement for the costs of repairing any damage to Project facilities or Project rights-of-way caused by
18 or arising out of the Contractor's activities under this Agreement.

19 (d) Upon termination of this Agreement, the Contractor shall promptly remove, at its
20 sole cost and expense, all connection facilities constructed or installed on the Water Supply System
21 right-of-way and restore said right-of-way and all Project facilities affected to their condition immediately
22 prior to the construction or installation of such connection facilities. If the Contractor fails to remove said
23 connection facilities and restore said right-of-way and Project facilities within thirty (30) days after receiving
24 any written notice from CAWCD to do so, CAWCD may remove said connection facilities and restore said
25 right-of-way and Project facilities at the Contractor's cost and expense, and, within thirty (30) days after
26 receiving written demand from CAWCD to do so, the Contractor shall pay CAWCD, as specified in such

1 written demand, for all costs and expenses incurred by CAWCD in removing said connection facilities and
2 restoring said right-of-way and Project facilities.

3 (e) If the Contractor's Project delivery point is a Project turnout or Project turnouts
4 constructed by the United States, and if the Contractor intends to convey water furnished to the Contractor
5 pursuant to this agreement through connection facilities owned or operated by others, the use by the
6 Contractor of such connection facilities shall be the subject of written agreement(s) between the Contractor
7 and the owner(s) or operator(s) of such connection facilities, and all such agreements shall include such
8 terms and conditions as may be required by CAWCD and shall be subject to the prior, written approval
9 of CAWCD before becoming binding upon the parties thereto.

10 (f) Unless the Contractor's Project delivery point is a Project turnout or Project
11 turnouts constructed by the United States, all water delivered from the Water Supply System shall be
12 measured with equipment furnished and installed by the Contractor and operated and maintained by the
13 Contractor at the Contractor's sole cost and expense. The results of such measurements shall be reported
14 to CAWCD in such manner and at such time(s) as CAWCD may prescribe. Upon the request of
15 CAWCD, the accuracy of such measurements shall be investigated by the Contractor, and any errors which
16 are determined to have occurred therein shall be adjusted; Provided, however, That in the event the parties
17 cannot agree on the required adjustment, CAWCD's determination shall be conclusive.

18 (g) If the Contractor's Project delivery point is a Project turnout or Project turnouts
19 constructed by the United States, all water delivered from the Water Supply System shall be measured with
20 equipment furnished and installed by the United States and operated and maintained by CAWCD. Upon
21 the request of the Contractor, or CAWCD, the accuracy of such measurements shall be investigated by
22 CAWCD and the Contractor, and any errors which are mutually determined to have occurred therein shall
23 be adjusted; Provided, however, That in the event the parties cannot agree on the required adjustment,
24 CAWCD's determination shall be conclusive.

25 (h) Neither the United States nor CAWCD shall be responsible for the control,
26 carriage, handling, use, disposal, or distribution of water beyond the Contractor's Project delivery point.

1 The Contractor shall hold the United States and CAWCD harmless on account of damage or claim of
2 damage of any nature whatsoever for which there is legal responsibility, including property damage, personal
3 injury, or death arising out of or connected with the control, carriage, handling, use, disposal, or distribution
4 of water beyond the Contractor's Project delivery point.

5 Interruptions and Reductions

6 7. In addition to the right of the United States under Subarticle 8.3(a)(iv) of the Repayment
7 Contract to temporarily discontinue or reduce the amount of water to be delivered, CAWCD may
8 discontinue or reduce the quantity of water to be furnished to the Contractor as herein provided for the
9 purposes of investigation, inspection, construction, testing, maintenance, repair, or replacement of any of
10 the Project facilities or any part thereof. CAWCD may also discontinue or reduce the quantity of water to
11 be furnished to the Contractor if there is insufficient Project Water or Project delivery capacity to deliver
12 the Contractor's water order, the water orders of other contractors of Incentive Recharge Water and Excess
13 water service, and all water deliveries scheduled pursuant to a contract with the United States or a
14 subcontract with the United States and CAWCD providing for Project Water service for a period of 50
15 years or more. So far as feasible, CAWCD shall attempt to coordinate any such discontinuance or
16 reduction with the Contractor and to give the Contractor due notice in advance of such discontinuance or
17 reduction. In case of emergency, no notice need be given. The United States, its officers, agents, and
18 employees, and CAWCD, its officers, agents, and employees, shall not be liable for damages when, for any
19 reason whatsoever, any interruption, discontinuance, or reduction in delivery of water occurs. If any such
20 discontinuance or temporary reduction results in deliveries to the Contractor of less water than what has
21 been paid for in advance, the Contractor shall be entitled to be reimbursed for the appropriate proportion
22 of such advance payments prior to the date of the Contractor's next payment of water service charges or
23 the Contractor may be given credit toward the next payment of water service charges if the Contractor
24 should so desire.

25 No Long-Term Commitment to the Delivery of Project Water

26 8. Nothing in this Agreement shall be construed as an allocation of Project Water to the

1 Contractor, nor shall this Agreement entitle the Contractor to any Project Water other than as provided
2 herein.

3 Quality of Water

4 9. CAWCD does not warrant the quality of any Project Water furnished under this Agreement
5 and is under no obligation to construct or furnish water treatment facilities to maintain or better the quality
6 of any Project Water. The Contractor waives its right to make a claim against the United States, CAWCD,
7 or any other Project subcontractor or contractor on account of the quality of Project Water or any changes
8 in water quality caused by the commingling of Project Water with other water.

9 Water Service Charges

10 10. (a) The Contractor shall pay in advance water service charges established annually by
11 CAWCD. On or before the date of execution of this Agreement, or as soon thereafter as is practicable,
12 CAWCD shall furnish the Contractor with the Contractor's water service charges for the initial Year of
13 water delivery (the "initial Year"). Within a reasonable time of receipt of said charges, but prior to the
14 delivery of water, the Contractor shall advance to CAWCD, in monthly installments payable on or before
15 the first day of each month of the initial Year, as determined by CAWCD, the water service charges due
16 for Incentive Recharge Water scheduled for delivery in the initial Year. For each subsequent Year,
17 CAWCD will establish water service charges, and CAWCD will notify the Contractor of the amount of
18 such charges on or before November 15 preceding each said subsequent Year. The Contractor shall make
19 payments of such charges in monthly installments due on or before the first day of each month of said
20 subsequent Year, as determined by CAWCD, for Incentive Recharge Water scheduled for delivery in said
21 subsequent Year. The Contractor shall pay in advance all water service charges established by CAWCD
22 for Incentive Recharge Water scheduled for delivery under this Agreement; Provided, however, That the
23 Contractor shall be relieved of the pumping energy portion of the water service charges associated with any
24 Incentive Recharge Water scheduled for delivery that is not delivered to the Contractor.

25 (b) The payment of all water service charges when due under this Agreement is a
26 condition precedent to delivery of Incentive Recharge Water.

1 (c) The obligation of the Contractor to pay CAWCD as provided in this Agreement
2 is a general obligation of the Contractor notwithstanding the manner in which the obligation may be
3 distributed among the Contractor's water users and notwithstanding the default of individual water users in
4 their obligations to the Contractor.

5 Termination of Contract

6 11. If the Contractor remains in arrears in the payment of any charges due CAWCD for a
7 period of 60 days or more, CAWCD may terminate this Agreement, which termination shall be effective
8 30 days after mailing written notice of termination to the Contractor. The Contractor shall remain obligated
9 to pay all charges required to be paid under this Agreement during the time period until and including the
10 date of termination. The Contractor's obligation to pay any amounts due but unpaid as of the date of
11 termination shall survive termination of this Agreement. CAWCD's right to terminate this Agreement as
12 provided in this Article 11 shall be in addition to the other rights of CAWCD under this Agreement and to
13 all other rights provided by law.

14 Charges for Delinquent Payments

15 12. (a) The Contractor shall be subject to interest, administrative and penalty charges on
16 delinquent installments or payments. The Contractor shall pay an interest charge for each day the payment
17 is delinquent beyond the due date. When a payment becomes 60 days delinquent, the Contractor shall pay
18 an administrative charge to cover additional costs of billing and processing the delinquent payment. When
19 a payment is delinquent 90 days or more, the Contractor shall pay an additional penalty charge of 6 percent
20 per year for each day the payment is delinquent beyond the due date. Further, the Contractor shall pay any
21 fees incurred for debt collection services associated with a delinquent payment.

22 (b) The interest charge rate shall be the greater of the rate prescribed quarterly in the
23 Federal Register by the Department of the Treasury for application to overdue payments, or the interest rate
24 of 0.5 percent per month prescribed by Section 6 of the Reclamation Project Act of 1939 (Public Law
25 76-260). The interest charge rate shall be determined as of the due date and remain fixed for the duration
26 of the delinquent period.

(c) When a partial payment on a delinquent account is received, the amount received
shall be applied first to the penalty and administrative charges, second, to the accrued interest, and third to
the overdue payment.

Rules, Regulations and Determinations

13. (a) The parties agree that the delivery of water or the use of Federal facilities pursuant
to this Agreement is subject to Reclamation law, as amended and supplemented, and the rules and
regulations promulgated by the Secretary of the Interior under Reclamation law.

1 (b) The Contracting Officer shall have the right to make determinations necessary to
2 administer this Agreement that are consistent with the expressed and implied provisions of this Agreement,
3 the laws of the United States and the State of Arizona, and the rules and regulations promulgated by the
4 Secretary of the Interior. Such determinations shall be made in consultation with CAWCD and the
5 Contractor.

6 Compliance with Environmental Laws

7 14. The Contractor, in carrying out this Agreement, shall comply with all applicable
8 environmental laws and regulations of the United States and the State of Arizona and shall obtain all required
9 permits or licenses from the appropriate Federal, State, or local authorities.

10 Equal Opportunity

11 15. During the performance of this Agreement, the Contractor agrees as follows:

12 (a) The Contractor will not discriminate against any employee or applicant for
13 employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative
14 action to ensure that applicants are employed, and that employees are treated during employment, without
15 regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to
16 the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff
17 or termination; rates of pay or other forms of compensation; and selection for training, including
18 apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants
19 for employment, notices to be provided by the Contracting Officer setting forth the provisions of this
20 nondiscrimination clause.

21 (b) The Contractor will, in all solicitations or advertisements for employees placed by
22 or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment
23 without discrimination because of race, color, religion, sex, or national origin.

24 (c) The Contractor will send to each labor union or representative of workers with
25 which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided
26 by the Contracting Officer, advising said labor union or workers' representative of the Contractor's
commitments under Section 202 of Executive Order 11246 of September 24, 1965, as amended, and shall
post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Contractor will comply with all provisions of Executive Order No. 11246 of
September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of
Labor.

(e) The Contractor will furnish all information and reports required by said amended
Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto,
and will permit access to its books, records, and accounts by the Contracting Officer and the Secretary of
Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Contractor's noncompliance with the nondiscrimination clauses
of this agreement or with any of such rules, regulations, or orders, this agreement may be canceled,
terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible for further
Government contracts in accordance with procedures authorized in said amended Executive Order, and
such other sanctions may be imposed and remedies invoked as provided in said amended Executive Order,
or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

1 (g) The Contractor will include the provisions of paragraphs (a) through (g) in every
2 subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor
3 issued pursuant to Section 204 of said amended Executive Order, so that such provisions will be binding
4 upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract
or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions,
including sanctions for noncompliance; Provided, however, That in the event the Contractor becomes
involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the
Contractor may request the United States to enter into such litigation to protect the interests of the United
States.

5 Compliance With Civil Rights Laws and Regulations

6 16. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (42
7 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (Public Law 93-112, as amended), the Age
8 Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws, as well as
with their respective implementing regulations and guidelines imposed by the U.S. Department of the Interior
and/or Bureau of Reclamation.

9 (b) These statutes require that no person in the United States shall, on the grounds of
10 race, color, national origin, handicap, or age, be excluded from participation in, be denied the benefits of,
11 or be otherwise subjected to discrimination under any program or activity receiving financial assistance from
the Bureau of Reclamation. By executing this agreement, the Contractor agrees to immediately take any
12 measures necessary to implement this obligation, including permitting officials of the United States to inspect
premises, programs, and documents.

13 (c) The Contractor makes this agreement in consideration of and for the purpose of
14 obtaining any and all Federal grants, loans, contracts, property discounts or other Federal financial
assistance extended after the date hereof to the Contractor by the Bureau of Reclamation, including
15 installment payments after such date on account of arrangements for Federal financial assistance which were
approved before such date. The Contractor recognizes and agrees that such Federal assistance will be
16 extended in reliance on the representations and agreements made in this article, and that the United States
reserves the right to seek judicial enforcement thereof.

17 Books, Records, and Reports

18 17. The Contractor shall establish and maintain accounts and other books and records pertaining
19 to administration of the terms and conditions of this Agreement, including: the Contractor's financial
transactions, water supply data, project operation, maintenance and replacement logs, and Project land and
20 right-of-way use agreements; the water users' land-use (crop census), land ownership, land-leasing and
water-use data; and other matters that CAWCD may require. Reports thereon shall be furnished to
CAWCD in such form and on such date or dates as CAWCD may require. Subject to applicable Federal
21 laws and regulations, each party to this Agreement shall have the right during office hours to examine and
make copies of each other party's books and records relating to matters covered by this Agreement.

22 Notices

23 18. Any notice, demand, or request authorized or required by this Agreement shall be deemed
24 to have been given, on behalf of CAWCD, when mailed, postage prepaid, or delivered to Mr. Eric
Kamienski, Water Resources Administrator, City of Tempe, P.O. Box 5002, Tempe, AZ 85280, and on
25 behalf of the Contractor when mailed, postage prepaid, or delivered to the General Manager, Central
Arizona Water Conservation District, 23636 North 7th Street, Phoenix, Arizona 85024. The designation
26 of the addressee or the address may be changed by notice given in the same manner as provided in this

Article for other notices.

Assignment Limited--Successors and Assigns Obligated

19. The provisions of this Agreement shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this Agreement or any right or interest therein shall be valid until approved in writing by CAWCD.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement No. _____
effective the day and year first above-written.

CENTRAL ARIZONA WATER
CONSERVATION DISTRICT

Attest: _____
Secretary

By: _____
President

CITY OF TEMPE

Attest: _____

By: _____

Title: _____

Title: _____

Approved as to form:



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